

So Ordered.



[Handwritten signature]

Whitman L. Holt
Bankruptcy Judge

Dated: February 8th, 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re: MENSONIDES DAIRY, LLC, and ART & THERESA MENSONIDES, Debtors.	CHAPTER 11 No. 18-01681-WLH11 LEAD CASE No. 18-01683-WLH11 ORDER GRANTING MOTION TO SELL DAIRY'S REAL PROPERTY BY AUCTION
---	--

This matter having come before the court on the Motion (the “Motion”)¹ of Matthew McKinlay (“McKinlay”), as Plan Agent of the Debtors’ First Amended Joint Chapter 11 Plan of Reorganization [Docket No. 479] (the “Plan”), for entry of an order authorizing McKinlay to sell the feedlot (the “Feedlot”) and main dairy (“Main Dairy” and, together with the Feedlot, the “Real Property”) owned by Art and Theresa Mensonides by auction, pursuant to the Order Appointing Plan Agent [Docket No. 959] (the “Plan Agent Order”), and the court having reviewed the Motion and the

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion or the Plan Agent Order, as applicable.

1 supporting Declarations of Matthew McKinlay, and the court's files herein; and this
2 court having jurisdiction and authority over this matter pursuant to 28 U.S.C.
3 §§ 1334(b) and 157(b)(2)(A) and the Confirmation Order [Docket No. 499] and the
4 Plan Agent Order; and the court finding cause exists to grant certain relief requested
5 in the Motion. Now, therefore, it is hereby

6 ORDERED:

7 1. The Motion [Docket No. 1070] is GRANTED as set forth herein;

8 2. McKinlay is authorized to sell the Real Property, whether collectively or
9 separately as to the Feedlot and Main Dairy, and the (a) equipment and titled vehicles,
10 and/or (b) livestock and feed to the extent any of such assets are also purchased by the
11 winning bidder for the Real Property, by auction held by Skye Root pursuant to the
12 Bidding Procedures and the Additional Auction Terms on an "as is where is" basis
13 without representations or warranties of any kind other than as set forth in the Purchase
14 Agreement;

15 3. The auction ~~shall~~ may be held on March 14, 2023 at 1:00 p.m. PT located
16 at the Holiday Inn Express at 680 Wine Country Road, Prosser, Washington 99350
17 and also by Zoom;

18 4. ~~McKinlay is authorized to determine whether~~ AgWest Farm Credit
19 Services, PCA and FLCA ("AgWest") is ~~deemed~~ a Qualified Buyer and, ~~to the extent~~
20 ~~consistent with the Plan Agent Order and applicable law, whether AgWest may credit~~
21 ~~bid for some or all of the assets to be sold that are among AgWest's collateral; pursuant~~
22 ~~to this Order that constitute its collateral. Such credit bid shall be made pursuant to all~~
23 ~~applicable laws and McKinlay's determination that allowing such credit bidding is~~
24 ~~appropriate;~~

25 5. McKinlay shall file a notice identifying the winning bidder(s) and backup
26

bidder(s) on the court's docket within three business days after the conclusion of the auction;

6. McKinlay is authorized to holdback a portion of the sale proceeds of the RealProperty for 60 days post-closing while McKinlay continues ~~working towards to~~ **pursue actions in a nonbankruptcy forum with the intent of** evicting and/or terminating the possessory interests of the Mensonides and the Bruinsmas, and other Dairy staff that are currently residing on the Real Property **(the court expresses no view regarding the merits of any such actions and all parties' rights, claims, and defenses with respect thereto are fully reserved for determination in an appropriate forum)**. The amount to be held back from the sale proceeds shall reflect a reasonable estimate of the expenses McKinlay may incur in the course of **attempting to effecting** the eviction and termination of possessory interests as well as the reasonable amount of damages expected to be asserted or incurred by the bidder that has purchased the Real Estate in connection with the delay in such bidder being able to take possession of the Real Estate. In the event AgWest and McKinlay cannot agree upon the amount of the holdback, the court, ~~on shortened notice,~~ may be asked to resolve such disagreement;

7. McKinlay is further authorized to sell the Feed upon conclusion of the sale of the Dairy's remaining livestock, whether pursuant to this Motion or the Motion to Sell Remaining Livestock, by any means he believes to be a valid exercise of his business judgment to yield the greatest recoveries under whatever circumstances exist at the time of such sale(s);

8. Pioneer Commodities, LLC's rights and claims are expressly reserved;

9. **This order does not authorize the distribution of any net sale proceeds by McKinlay and A**all parties, including the Debtors, reserve all rights and defenses with respect to any claimant's rights of distribution from the net sale proceeds and further

1 reserve their rights and defenses as to the allowability, priority, and amount of such
2 rights of distribution, or as to any right or related defense or objection arising pursuant
3 to any alleged homestead exemption asserted by the individual Debtors; and

4 10. McKinlay is authorized to execute such documents and take such further
5 actions as may be necessary or appropriate to accomplish the terms of this order.

6
7 // END OF ORDER //

8 PRESENTED BY:

9 SUSSMAN SHANK LLP

10 /s/ Jeffrey C. Misley

11 By Jeffrey C. Misley, WSBA #33397
12 *Attorneys for Matthew McKinlay, Plan Agent*

13 * Changes made by court